IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 293 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

BALDEVBHAI V THAKKAR

Appearance:

1. Criminal Revision Application No. 293 of 2001

PUBLIC PROSECUTOR for Petitioner No. 1-2

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/09/2002

ORAL JUDGEMENT

Heard learned Public Prosecutor for the revisioner State. The revision is preferred against order passed by Special Judge (Essential Commotities), Mehsana in Criminal Appeal No. 15/2000 dated 16.3.2001. The said appeal arose out of an order passed by Collector, Mehsana in Case No. 2/P/PPR/6-A/Case/103 of 99, confiscating tanker No. GJ8 T 3941 belonging to present respondent, alongwith a quantity of 4000 litres of diesel.

2. The facts of the case in brief are that the said tanker started from Indian Oil Corporation on 25th October, 1999 with 12,000 litres of diesel from the depot of IOC at Sidhpur at about 13.00 hours and reached the Depot of State Transport Corporation at Kheralu at about 15.00 hours. Since the tanker reached the ST Depot late, the Depot Manager became suspicious. He therefore opened the seals on the top of the three compartments of the tanker and tested the density. It was found that the density in compartment No.2 was not conforming to the standard and blue coloured kerosene was found therein. He therefore immediately reported this fact to the Mamlatdar at Kheralu. The said tanker and the quantity of diesel was therefore, seized. Proceedings were initiated, notices were issued and after conclusion of the proceedings the Collector passed the impugned order confiscating tanker No. GJ8 T 3941 and 4,000 litres of diesel, which was found from compartment No.2 of the tanker. Aggrieved by the said order of the Collector, the said Criminal Appeal was preferred before the learned Special Judge (Essential Commodities), Mehsana and he in turn passed the impugned order.

2. Learned Special Judge observed that there is no dispute about the fact that the seal on the compartment of the tanker was found to be intact and it was opened only by the Depot Manager of the S.T Corporation at Kheralu. Learned Judge observed that this would indicate that there was no manipulation after the tanker was filled-in at the depot of the IOC. Whatever had happened before the tanker was sealed at the IOC Depot and therefore possibility of some person at the IOC Depot being involved in this activity of adulteration cannot be ruled out. Learned Judge observed that the appellant - respondent herein cannot be saddled with liability of adulteration in any manner in absence of any other material. He therefore confirmed the order of confiscation of 4,000 litres of diesel, but set aside the order of confiscation of the tanker and ordered its release. Aggrieved by the said order, present Revision is preferred.

3. Learned Public Prosecutor was not in a position to assail the observations of the learned Special Judge either on question of merits or on question law. In the facts of the case, this Court is inclined to accept the observation of the learned Special Judge that the adulteration took place before the compartments of the tanker were sealed and therefore the respondent cannot be saddled with any liability. Though feebly, it was urged that the respondent may be a party to the mischief played

at the Depot of the IOC and therefore also, the tanker ought not to have been released. This contention also cannot be accepted for the reason that, it was not the case of the Government that respondent conspired with officers of IOC in adulteration. Under the circumstances no interference is called for in the impugned order. Revision must fail. Same is dismissed. Rule is discharged.

(A.L.Dave, J.)

*/Mohandas